Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1029

SAMUEL A. SCARNATO, ET AL.,
Appellants,

versus

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL.,
Appellees,

LOUISIANA SCHOOL BOARDS ASSOCIATION AND JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

On Appeal from the United States District Court for the Middle District of Louisiana

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The judgment and per curiam opinion of the district court are reprinted in Appendix A, *infra*, and reported at 415 F.Supp. 272 (M.D. La. 1976). The court's minute entry denying appellants' motion for a new trial is reproduced in Appendix B, *infra*.

JURISDICTION

The judgment of the three-judge district court granting appellees' motion for summary judgment and dismissing appellants' complaint was entered on June 15, 1976. The court's minute entry denying appellants' timely motion for a new trial was filed on September 9, 1976. Appellants filed a notice of appeal to this Court (Appendix C, *infra*) on October 29, 1976. The time for docketing the appeal was extended by order of Mr. Justice Powell to January 28, 1977. The jurisdiction of this Court is conferred by 28 U.S.C. §1253.

QUESTION PRESENTED

Whether a statewide school finance statute that is directly linked to concededly arbitrary local property assessments has a rational basis under the Equal Protection Clause of the Fourteenth Amendment simply because there is a possibility that the statutory scheme may be phased out by the 1979-80 school year.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Article VII, Sections 18 and 23, and Article VIII, Section 13(B) - (D) of the 1974 Louisiana Constitution;

Louisiana Senate Concurrent Resolution No. 10 of 1975; Act 16 of the 1975 Regular Session of the Louisiana Legislature; Louisiana Senate Concurrent Resolution No. 89 of 1976; Act 17 of the 1976 Regular Session of the Louisiana Legislature; and excerpts from certain minutes of the Louisiana State Board of Elementary and Secondary Education are set forth in pertinent part in Appendix D, *infra*.

STATEMENT

Appellants are the Orleans Parish School Board and several concerned taxpayers and parents of minor children attending the public schools of Orleans Parish, Louisiana. For themselves, and on behalf of their minor children, appellants instituted this suit on February 10, 1976 in the United States District Court for the Middle District of Louisiana to challenge a state statute that establishes a formula for distributing state funds to local school districts under Louisiana's "minimum foundation program" of public education ("MFP").

In 1973, after deciding *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), this Court summarily affirmed the judgment of three-judge district court in Louisiana which held that the Equal Protection Clause "assures equality not only in the imposition but also in the distribution of state revenues." *Levy v. Parker*, 411 U.S. 978 (1973), *aff'g* 346 F.Supp. 897, 903 (E.D. La. 1972). The *Levy* case involved distributions to Louisiana's parishes from the State's property tax relief fund ("PTR" Fund), a fund designed to reimburse local governments for tax

revenues lost because a fixed dollar amount of the assessed value of each taxpayer's home is exempt from taxation.[1] By statute, PTR distributions to each parish were directly proportional to the *ad valorem* tax millage rates of that parish. These tax rates, though superficially reflecting revenues lost to each parish on account of the homestead exemption, in fact were not a meaningful index of lost revenues; independent parish tax assessors could (and did) compensate for high millage rates by an overall manipulation of assessment levels.[2] The court concluded that the statutory scheme at issue had no rational basis and denied equal protection to the *Levy* plaintiffs:

> No reason has been advanced, nor any governmental policy argued, that would support the reimbursement of each Louisiana parish on the basis now in effect. It has not been suggested that the amounts now being paid to any parish are based on its real loss of revenue resulting from the homestead exemption, or on state policy based on any rational geographical or demographic classification, or on any other basis that might constitute coherent governmental policy. Louisiana's appropriations from its PTR Fund are based on no discernible attempt either to classify parishes or even to deal with them on an ad hoc basis one by one.[3]

1 For veterans, $5,000 of assessed value was exempt. For other taxpayers, the homestead exemption, as it is called, was $2,000.

2 "It was possible to increase the parish share of PTR Fund payments, without simultaneously increasing the tax burden on local homeowners, by raising the millage rate on all property while lowering the assessments on property not occupied as a homestead and raising the assessments of homesteads to approach the allowable homestead exemption. The evidence indicates that this was in fact done.

The millage rate in a parish does not now necessarily reflect the severity of that locality's tax burden. At least in some parishes it reflects the degree to which the local authorities have manipulated the several variables determining the tax burden imposed on its residents. The millage-times-assessment-any-basis-you-choose formula for distributing state funds is, in a word, arbitrary. It establishes a rule for distributing state funds that is no rule at all."

Levy v. Parker, *supra*, 346 F.Supp. at 903.

The MFP school funding program at issue on this appeal represents a continuing intrusion of variable local assessment practices[4] into fund distributions by the State of Louisiana. Under the challenged statutory formula, the state deducts from sums budgeted for needs of each local district a sum for "support", in theory representing the district's ability to provide for its own school needs. This sum is determined predominantly by multiplying a constant factor of 5 mills times the (unequalized) *assessed* value of property situated in the district.[5] Thus, the higher a dis-

3 346 F.Supp. at 903-04.

4 In 1973, a Louisiana Court of Appeal held the variable assessment system grossly arbitrary and inequitable, in violation of federal guarantees of due process and equal protection of the laws. *Bussie v. Long*, 286 So.2d 689 (La. App. 1st Cir. 1973). The Louisiana Supreme Court denied review. 288 So.2d 354 (1974).

5 More precisely, until 1976 the state deducted the lesser of actual collections from the 5 mill tax or 90% of 5 mills times total parish assessment. Upon partial equalization of the assessment portion of the calculation, see n. 14, *infra*, the state eliminated the 90% alternative calculation. 5 mills represents the basic level of school taxation authorized by the Louisiana Constitution. Additional millage may be (and is commonly) imposed only with the approval of parish residents. Louisiana Constitution of 1974, Article VIII, Section 13(C), App. D, *infra*, pp. 21a-22a. In Orleans Parish, the basic level of taxation provided by the state constitution is 13 mills. *Id.*

trict's assessment-to-value ratio, the more the state deducts; the lower the assessment-to-value ratio, the less the state deducts.

The impact of this formula is dramatic. Jefferson Parish, which embraces the fastest growing suburbs of New Orleans, received for 1975-76, $1,474,734 per annum more than it would receive were its average assessment ratio of 6.04% of fair market value (third lowest of Louisiana's 64 parishes) restated at the statewide average of 11.39%. Urban Orleans Parish, with an average assessment ratio of 17.06% of fair market value, received from the State some $2,577,904 less for the 1975-76 school year than under an assessment-equalized funding formula. Similarly, the urban districts of Caddo Parish (Shreveport) and East Baton Rouge Parish (Baton Rouge) were short-changed by $991,069 and $720,317, respectively.

Because the statutory formula for school funding is tied directly to these variable assessment levels, which are quite distinct from property values *per se*, appellants alleged in their complaint that the statutory scheme lacked any logical or rational connection with the avowed legislative objective of correlating the level of state MFP financial assistance to a district with the district's ability to support its public education program. Appellants prayed that the three-judge court declare the Louisiana statutory scheme unconstitutional as lacking any rational basis and denying appellants the equal protection of the laws. Appellants further sought preliminary and permanent injunctions enjoining appellees, both for the 1975-76 school year and for all future years, from

deducting from local district MFP allocations any amounts based on assessed property values.[6]

Despite the prior decision in *Levy*, the District Court rejected appellants' contentions, denied all relief, and granted appellees' motion for summary judgment. Of its three and one-half page *per curiam* opinion, the court addressed only two brief paragraphs, occupying scarcely a page of the opinion, to the substance of appellants' contention that deductions from MFP funds lack any rational basis when tied to parochial assessments of property values. The District Court readily granted that "immovable property in Louisiana is not uniformly assessed with respect to its fair market value" and that "the assessed value of property, vis-a-vis its fair market value, has always varied from parish to parish." (Dist. Ct. Op., App. A, *infra*, at p. 7a). Asserting, however, that appellants were concerned only with a single year's appropriation (assertedly 1975-1976), that the 1976-77 formula utilizes partially equalized assessments, and that the new Louisiana Constitution of 1974 requires statewide equalization of assessments by January 1, 1978, the District Court concluded that the "evolving processes" of legislative change and "efforts now being made by the state" afforded the Louisiana MFP formula a rational relation to its purpose. The Court dis-

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6 Appellants asked for three alternative categories of relief: a simple pro rata deduction from each district's anticipated costs; or a deduction based on equalized assessments multiplied by 5 mills; or a deduction in a sum "determined by the Court to be fair, equitable and reasonable." (Complaint, p. 12). The District Court opinion briefly noted the complexities of the equalized form of relief (Dist. Ct. Op., App. A, *infra*, at p. 8a), but the possible complexities of equalization would not excuse the court from exploring its feasibility or the feasibility of other patterns of relief.

tinguished *Levy v. Parker, supra*, apparently on the ground that it involved a static continuing appropriation formula different from the "evolving processes" the Court saw at work here.[7]

THE QUESTION IS SUBSTANTIAL

The decision below involves a fundamental misinterpretation of this Court's decisions in *San Antonio Independent School District v. Rodriguez* and *Levy v. Parker, supra*. The *Rodriguez* decision established that a state may permit the level of funding available to a local school district to vary with the value of property located within the district.[8] The ma-

7 The District Court suggested that *Levy v. Parker* could be distinguished from the case at bar because, in *Levy*, the arbitrary distribution of state funds was coupled with a restriction on the ability of the plaintiff taxing authority (Orleans Parish) to impose additional tax burdens as a means of recouping revenues arbitrarily withheld by the state. (Dist. Ct. Op., App. A, *infra*, at p. 11a). But the taxing limitation described there was dictum, unnecessary to *Levy's* holding that the Equal Protection clause does not condone "a rule for distributing state funds that is no rule at all." *Levy v. Parker, supra*, at 903. The Court also suggested that distributions from the MFP fund are rational because 5 mills times assessed value provides a measure of school taxes *collected* by the parishes — even if variable assessments mean that collections do not precisely reflect district wealth or ability to pay. This rationale is based on a wholly erroneous factual assumption; the 1974 Louisiana Constitution (Article VIII, section 13(C), App. D, *infra*, at p. 22a) authorizes parishes to impose ad valorem school taxes in excess of 5 mills, and many parishes have done just that. Jefferson Parish, for example, in 1975 imposed an additional school tax of 31 mills, in no way taken into account in the PTR formula. (Exhibit P-11, pp. 66-67). Thus, contrary to the Court's assertion, 5 mills times assessed value does not reflect actual parish school tax collections much less any meaningful notion of ability to pay.

8 The District Court mistakenly identified appellants' claim as based on "district wealth discrimination" and devoted the bulk of its opinion to rejecting what it perceived as appellants' assault on the holding in *Rodriguez*. (Dist. Ct. Op., App. A, *infra*, pp. 8a-10a). See also pp. 15-16, *infra*.

jority in *Rodriguez* sanctioned allocations of state resources among local school districts "that [are not] so irrational as to be invidiously discriminatory." *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 55; *see McGinnis v. Royster*, 410 U.S. 263, 270 (1973), and cases cited.

Plainly, then, the Equal Protection Clause grants broad discretion to the states with respect to fund distributions, not "demand[ing] a surveyor's precision," *cf. Hughes v. Alexandria Scrap Corp.*, 44 U.S.L.W. 4959, ___ U.S. ___ (1976) and affording a latitude comparable to what the states possess in economic matters. At the same time, *Rodriguez* affirms that the clause *applies* to the distribution of state funds, precluding distributions that are demonstrably arbitrary. *Levy v. Parker, supra*, decided during the 1972 Term not long after *Rodriguez*, holds precisely that. There must be some reason, some "coherent governmental policy," some "discernible attempt either to classify parishes or even to deal with them on an ad hoc basis one by one" to justify disparate distributions of state funds among competing localities. *Levy v. Parker, supra*, 346 F.Supp. at 903.[9]

Levy itself presented the extraordinary case of a patently arbitrary state revenue distribution scheme. Because Louisiana's parish property assessments were grossly inconsistent, parish tax millage rates were not a plausible yardstick of tax effort or lost reve-

9 District Judge E. Gordon West dissented in *Levy v. Parker*, arguing that a State is not restricted by the Fourteenth Amendment in the manner in which it distributes funds to its political subdivisions. *Id.* at 905.

nues, and as a basis for state fund distributions, reflected no "coherent government policy." Fully sensitive to the narrow scope of review with respect to state revenue measures,[10] the District Court held that the statutory scheme in *Levy* was unconstitutional. This Court affirmed.

In the present appeal, it is the variable parish assessments themselves — one step removed even in *Levy* — to which state distributions are tied. In the present appeal, funds for education — not the general revenue disbursements of *Levy* — are at stake. Yet the District Court sustained the MFP program. Confronted with the stark fact of Louisiana's variable assessments, the millions of dollars of school aid tied to those assessments, and the controlling precedent of *Levy v. Parker*, the District Court reasoned that an arbitrary school financing formula of some twenty years' longevity possesses constitutional rationality because there is hope that the formula may be phased out in coming years.

The District Court's decision presents an important question concerning the proper relation between substantive and remedial concerns under the Equal Protection clause. While the pragmatism of the District Court may be appropriate in framing complex constitutional remedies or in this Court's exercise of its own jurisdiction, the rational relation test (however ambiguous in some instances) has never been construed to grant a District Court unbridled discretion to refuse to confront a substantial equal protection claim. The decision below elevates "prac-

10 *Id.* at 901-02.

tical considerations [that] play no role in the adjudication of . . . constitutional issues"[11] to a position of determinative constitutional force.[12]

Numerous decisions of this Court have explained that the injunctive powers of the federal courts "may be exercised 'only on the basis of a constitutional violation' " and even then that the Court must fashion "the scope of the remedy" to fit "the nature and extent of the constitutional violation." *Milliken v. Bradley*, 418 U.S. 717, 738, 744 (1974), *quoting Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1972). It is a court's duty to take exceptional care in devising and in timing constitutional remedies. *Cf. United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969). According to the decision below, however, it is unnecessary even to confront those difficult remedial choices when an arbitrary state law gives some promise that it will wither away of its own accord.[13]

11 *San Antonio Independent School District v. Rodriguez*, *supra*. 411 U.S. at 58.

12 Such decisions as *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955), *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969), and *Schilb v. Kuebel*, 404 U.S. 357, 364-65 (1971) establish that a legislature may create a remedial scheme that takes reform "one step at a time" and need not "cover every evil that might conceivably have been attacked." *McDonald v. Board of Election Commissioners*, *supra*, 394 U.S. at 809. But nothing in the *Williamson* line of cases suggests that a legislature is free to retain an arbitrary statutory scheme with only minor modifications simply because there is an indefinite hope of future reform.

13 *Harte v. Lennhausen*, No. 75-253, 328 N.E. 2d 543 (Ill. 1975), *cert. den.* ___ U.S. ___ (1975) involved a similar claim that locally variable property assessments do not provide a constitutional basis for school funding distributions. There, however, the Supreme Court of Illinois properly addressed the remedial difficulties of a retroactive injunction against already-completed disbursements, while facing up to the plaintiff's substantive con-

The District Court's refusal to deal meaningfully with appellants' substantive claim has had, and continues to have, adverse consequences for the taxpayers and school children of New Orleans. Contrary to the court's suggestion, appellants' complaint was not confined to "a single year's appropriation", but sought relief against application of the assessment-based formula "for the fiscal year 1975-76, and for future years". By denying appellants' request for a preliminary injunction, the District Court permitted arbitrary distribution of MFP funds for the entire school year 1975-76. By denying appellants' request for declaratory or permanent injunctive relief, the District Court decision has permitted similar distributions during the current school year, 1976-77.[14] In fact, the District Court decision may permit non-equalized distributions to continue at least through the school year 1979-80, since assessments will be

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stitutional contentions and providing relief as to uncompleted fund distributions. 328 N.E. 2d at 548. Accordingly, in *Harte* this Court had no occasion to address the issue raised on this appeal. Nor does this appeal involve the constitutionality *vel non* of allegedly discriminatory property tax assessments, as was the case in, *e.g.*, No. 75-1638, *Kell v. Chivilis, app. dismissed,* ___ U.S. ___, or *Capehart v. City of Chesapeake,* No. 75-210, *cert. den.,* ___ U.S. ___.

14 The 1976-77 support formula has been modified to equalize assessments on immovable (real) property but remains unequalized with respect to that portion of the support formula (about half) attributable to movable (personal) property. The mischief wrought by the District Court's judgment has become more evident since the Jefferson Parish School Board filed suit in a Louisiana state court to block implementation of even this modest reform. *Horne and Jefferson Parish School Board v. Louisiana State Board of Elementary and Secondary Education,* No. 197-818, Nineteenth Judicial District Court, Parish of East Baton Rouge (filed December 3, 1976).

equalized no sooner than December 31, 1977[15] and the summer legislative appropriation for the school year beginning that September typically utilizes assessments for the preceding year. Thus, the 1977-78 appropriation will utilize 1976 assessments, and the 1978-79 appropriation will use 1977 assessments.

More basically, there is no guarantee that the 1974 Louisiana Constitution will lead to reform of the unequalized assessment — based MFP program at any specific time in the foreseeable future. The 1974 Constitution requires that assessments as a percentage of fair market value be "uniform throughout the State on the same class of property",[16] and that each assessor complete new value determinations before December 31, 1977 in order to implement the requirement of uniformity.[17] But nothing in the 1974 Constitution assures systematic review of these new valuations, or requires that any review that is

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15 Thus, although the 1975-76 distribution has been completed, the case involves a continuing dispute between the parties concerning the use of non-equalized assessments in the distribution formula for at least the 1976-77, 1977-78, and 1978-79 school years, as well as appellants' possible assertion of their entitlement to reimbursement for funds attributable to 1975-76. The amount distributed by the state to the various parish school boards for a Minimum Foundation Program of Education has been reduced by a sum equal to 5 mills times the assessed value of property in each parish since the fiscal year 1956-57, and it has remained basically the same since that date. Because of the short time between refinement of the precise formula for a given year and actual distribution, completion of the 1975-76 distribution does not moot this appeal. The complained of distributions are "capable of repetition yet evading review." *Dunn v. Blumstein,* 405 U.S. 330 (1972); *Brockington v. Rhodes,* 396 U.S. 41 (1969).

16 1974 Louisiana Constitution, Article VII, Section 18(A), App. D, *infra,* at p. 18a.

17 *Id.*, Article VII, Section 23, App. D, *infra,* at pp. 20a-21a.

conducted be concluded promptly enough to bear on MFP distributions in the foreseeable future. The previous Louisiana Constitution, that of 1921, contained a provision requiring assessment at actual cash value and authorizing assessment review by a state tax commission.[18] Both provisions were officially flouted, as was a prior "comprehensive" reform statute enacted as recently as 1972, which also required assessment at actual cash value.[19] Even more fundamentally, there is not a syllable of constitutional or statutory law in Louisiana to require that MFP distributions after December 31, 1977 incorporate any reform in assessment practices that does occur. Not only then, did the District Court confuse right with remedy; it refused to rectify an immediate tangible constitutional harm by anticipating future reform that may never come to pass.

In their filings with the District Court, appellees repeatedly argued that *Rodriguez* explicitly sanctioned distributions of state funds based on variable local assessments and thus flatly disposed of the issue before the court. (*See, e.g.*, Trial Memorandum of Intervenor-Defendant Jefferson Parish School Board at pp. 6-7). The basis for these arguments was a paragraph and a footnote in the *Rodriguez* opinion in which the Court acknowledged that the disparities in school revenues raised through local district taxes were attributable not merely to inherent disparities in property values but also "in part" to "differences in

18 Louisiana Constitution of 1921, Article X, Sections 1 and 12.

19 La. Rev. Stat. 47:1957 *et seq*. For a detailed review of the abuse of these state constitutional and statutory requirements, see *Bussie v. Long*, *supra* note 4, 286 So.2d at 701-06.

the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value." The footnote pointed out that statewide assessments in Texas vary from county to county. *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 46 & n. 100.

The quoted language, however, was only a parenthetical acknowledgment that, to some degree, differences in the amount of money raised by local school taxes in Texas were a function of local choices as to millage and assessment levels to be utilized in structuring local school taxes. Distributions of state funds were not materially determined by these variances, as is the case in Louisiana. The dissent observed as much, without contradiction by the Court.[20]

The Court in *Rodriguez* also described the computation of each district's "Local Fund Assignment", a two-step computation first derived from a "complicated economic index" at the county level and then, at the individual district level, from "each district's share of assessable property within the county." *Id.* at 10. Although the economic index included property values generally, there is no indication in the Court's opinion that this "complicated economic index" utilized *assessed* property values and certainly no hint that assessed values were a dominant factor in

20 *San Antonio Independent School District v. Rodriguez, supra.*, 411 U.S. at 74 n. 8 (dissenting opinion of Marshall, J.):

> "I believe we must deal with this case on the assumption that differences in local methods of assessment do not meaningfully affect the revenue-raising power of local districts relative to one another. The Court apparently admits as much."

determining state funding, as in Louisiana. As for the district share of each county's Local Fund Assignment, the Court referred to the district's "assessable" property, which is distinct from assessed valuation (compare the obviously contrary usage at p. 46). In any event, as among multiple districts in a given county of uniform assessments, an allocation based upon those uniform assessments surely is not dispositive of the distribution here among parishes where assessments are not uniform. The minutiae of *Rodriguez* do not, then, resolve the substantial issue raised by this appeal.

CONCLUSION

We recognize fully the District Court's reluctance to demand more than the simplest justification for a state revenue distribution scheme. Nevertheless, we suggest respectfully that the court's judgment demands not even the most basic constitutional logic to justify the Louisiana statutory scheme at issue.

For the foregoing reasons, probable jurisdiction should be noted or, alternatively, the judgment of the District Court should be reversed without plenary consideration and the cause remanded for development of an appropriate remedy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Jurisdictional Statement have been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto this ____ day of January, 1977.

Of Counsel

APPENDIX A

United States District Court
Middle District of Louisiana

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children ET AL

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL

JUDGMENT

This case came on for hearing of oral arguments on June 3, 1976 on Plaintiffs' Motion for a Preliminary Injunction and on the Motion of all Defendants for Summary Judgment dismissing this suit in its entirety. After oral argument, the case was submitted on stipulated facts. Now, after due consideration hereof and for written reasons to be forthwith assigned and filed in this record,

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for the issuance of a Preliminary Injunction be and it is hereby DENIED, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Summary Judgment be and it is hereby GRANTED, and this case is hereby DISMISSED.

Baton Rouge, Louisiana, June 15, 1976.

/s/ ROBERT A. AINSWORTH, JR.
Robert A. Ainsworth, Jr.
United States Circuit Judge

/s/ E. GORDON WEST
E. Gordon West
United States District Judge

/s/ ALVIN B. RUBIN
Alvin B. Rubin
United States District Judge

United States District Court
Middle District of Louisiana

SAMUEL A. SCARNATO, ET AL.
Plaintiff

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, ET AL.
Defendant

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Before AINSWORTH, Circuit Judge, and WEST and RUBIN, District Judges

PER CURIAM:

This action seeks to enjoin the enforcement of, and challenges the constitutionality of, the statutory scheme under which general revenues of the State of Louisiana are allocated to parish and city school systems in Louisiana to insure a minimum foundation program of education (MFP) in all public elementary and secondary schools. Jurisdiction of this Court is properly invoked under Title 28 U.S.C. §§1331 and 1343. Since plaintiffs seek to enjoin and restrain the enforcement of a duly enacted state statute, and certain resolutions and orders issued pursuant thereto, this statutory three-judge court was properly convened under the provisions of Title 28 U.S.C. §§2281. All of the pertinent facts have been stipulated to by all counsel, or covered by affidavits filed with the consent of all parties, and the record is complete without the necessity of further evidentiary hearing. Plaintiffs seek a preliminary injunction, and defendants seek by motion to have the case dismissed.

Article VIII, Section 13 of the 1974 Louisiana Constitution provides, in part, as follows:

"§13. Funding; Apportionment.

* * *

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secon-

dary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or subschool district, or any municipality or city school board which supports a separate city system for public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

Pursuant to this constitutional mandate the Louisiana State Board of Elementary and Secondary Education, on March 21, 1975, adopted and submitted to the Louisiana Legislature for its approval an "equalization formula" to be applied in the allocation of State general funds to the sixty-six parish and city school boards throughout the State to insure a "minimum foundation program" of education for all public elementary and secondary schools. The formula, a copy of which is attached hereto as Appendix A, was, of course, submitted without specific cost figures or final support figures filled in because those figures, which must necessarily vary from school district to

school district, have to be determined in each instance by cost figures furnished by the district involved. The "equalization formula" is exactly what it purports to be, that is, a formula to be used in order to determine the cost to each school district of a "minimum foundation program" in that district, the amount of financial support for the program that will come from the taxes and rents enumerated in the formula, and the amount of contribution from the State general fund that will be needed to make up the difference between the total cost of the program in a particular school district and the amount to be contributed to the cost by the district itself. The only part of the formula that is under attack here is the part that requires the proceeds the parish receives from the 5-mill constitutional ad valorem tax to be included in the support required from the local school district and thus to be deducted from any amount to be contributed by the State. In the formula the deduction for Orleans Parish is based on the proceeds of a 5-mill levy, the same amount deducted for other parishes. It is the plaintiffs' contention, however that since the ratio of assessment to fair market value of immovable property subject to taxation varies greatly from parish to parish in Louisiana, the deduction of the amount that would be yielded by a 5-mill levy in the "equalization formula" denies them the equal protection of the law required by the 14th Amendment of the U. S. Constitution. They also contend that the formula violates Article VIII, Section 13(B) of the 1974 Louisiana Constitution pursuant to which the formula was adopted, because it does not provide for an equitable allotment of funds as mandated by that article.

There is no dispute about the fact that immovable property in Louisiana is not uniformly assessed with respect to its fair market value. Assessors are elected public officials of each parish, and the assessed value of property, vis-a-vis its fair market value, has always varied from parish to parish. Each parish through its assessor has generally been allowed to determine the assessed value of property for tax purposes without interference from State authorities. This, of course, has resulted in property in some parishes being assessed for tax purposes at higher rates in comparison with its fair market value than property in other parishes. Property in Orleans Parish, where plaintiffs reside, and in some other urban areas, has generally been assessed at higher rates than has property in rural areas. Thus, the 5-mill tax here under attack yields more money on property located in New Orleans than on similar property with an equal fair market value located in those parishes where assessments are lower than those applied in New Orleans. As a further result, when the "equalization formula" is then applied, the contribution exacted from Orleans Parish to support its MFP is proportionately greater than that required of other parishes using lower ratios of assessment to fair market value, and hence the State's equalizing contribution to Orleans Parish will be less than it would have been had Orleans Parish used a lower assessment to fair market value ratio, such as is used in many other parishes. Plaintiffs would apparently have no complaint about this 5-mill contribution if all property in the State were valued at its fair market value and if every parish were required to use the same assessment to market value ratio for tax purposes. But, they

say, when unequal assessments are permitted, and then a uniform millage is applied to those unequal assessments and charged against the school district when equalizing funds are distributed by the State, this deprives the various school districts of equal protection of the law and penalizes those districts using a high assessment rate.

There is no evidence in the record to suggest that the plan employed discriminates in any way against any definable category of "poor people" or that it results in the deprivation of a "minimum foundation education" to any class of persons, or indeed to any individual person. It is clear from the record that the objective of the State's "Minimum Foundation Program" is being accomplished by use of the formula. The only real question is whether or not the plaintiffs have a justifiable claim based upon "district wealth discrimination".

Even if all property were assessed on a uniform basis, the parishes with relatively less valuable immovable property would contribute less to the MFP than the parishes whose residents own more valuable property. Local ability to support MFP diminishes the amount of the state contribution. If the measure of each parish's contribution were based on the total value of its immovable property, or on an assessment based on total value, the plaintiffs concede they would have no complaint. Nor do they contend that this should be accomplished. Instead they contend that some theoretical average of assessment to fair market value should be computed and applied evenly to presumed fair market value state wide. Then 5 mills of

this theoretical figure should be computed and used to measure each parish's obligation. This formula would depend on three theoretical figures, not readily susceptible of being computed, the total market value of properties, the statewide average assessment and each parish's average assessment. It would also still make each parish's average relative wealth a measure of the parish's contribution. The amount a parish actually receives from a 5 mill levy on its actual assessment is a real figure, not a hypothetical one, and it takes parochial ability to pay into account in a way that is different, but not constitutionally invalid.

In San Antonio Independent School District, Et Al. v. Rodriguez, 93 S. Ct. 1278, 411 U. S. 1, 36 L. Ed. 2d 16 (1973), as in the present case, the financing of public elementary and secondary schools was a product of State and local participation. Each Texas school district was required to supplement State aid through an ad valorem tax on property within its jurisdiction. The ad valorem tax assessed for school purposes produced more revenues in some districts than in others, resulting in some districts having to contribute more local funds to the Minimum Foundation Program than other districts. The differences in productivity of the ad valorem taxes resulted in different amounts of equalizing funds being contributed to the different school districts by the State.

In considering the alleged denial of equal protection in violation of the Fourteenth Amendment, the Court said:

> It has simply never been within the constitutional prerogative of this Court to nullify

> statewide measures for financing public services merely because the burden or benefits thereof fall unevenly depending upon the *relative wealth of the political subdivisions* in *which citizens live*. In sum, to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. 93 S. Ct. at 1307-8.

Just as was the Supreme Court in *Rodriguez*, so are we, " — unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in fifty States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The Constitutional standards under the Equal Protection Clause is whether the challenged State action rationally furthers a legitimate State purpose or interest." Ibid.

In determining whether the rational relationship test has been met we also take into account that the plaintiffs here seek to reopen only one part of a single year's appropriation, based on a formula effective for only one year; the proposed formula for 1976-77 takes into account a partial equalization of the kind here sought; the Louisiana Constitution adopted in 1974, requires uniform statewide assessment, Art. 7, § 18(A), and a study designed to accomplish its mandate is now under way, see Executive Order 76-2. We do not have here as in Levy v. Parker, E.D.La. 1972, 346 F. Supp. 896, on which plaintiffs rely, the combination of une-

qual assessments, limitations on the taxing power of a local government, and payment of state revenues to localities that there composed "the cumulative thrust of Louisiana's trident of constitution and statute" found to be invalid. 346 F. Supp. at 904. We were careful there to distinguish appropriations "not based on a continuing formula," and we pointed out that the assessment policies there considered did not alone deny equal protection.

Considering the entirety both of the Louisiana MFP program and the other efforts now being made by the state, the state's formula for 1975-76 appears at this time to be rationally related to its purpose. The state is pursuing studies in an effort to fulfill the state's own constitutional mandate to achieve equal assessment. It is modifying its formula for parochial contributions to the MFP program. These are still evolving processes. At this time, no denial of equal protection has been shown, and we heed the Supreme Court's admonition,

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. 93 S. Ct. at 1309.

Since we find no violation of the equal protection clause of the federal constitution, we feel it is wiser to also dismiss the pendent claim asserted under the Louisiana constitution.

Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. United Mine Workers of America v. Gibbs, 1966, 87 S. Ct. 1130, 1139.

For these reasons the plaintiffs' request for a preliminary injunction will be denied and the defendants' motion for summary judgment dismissing this suit in its entirety will be granted.

/s/ ROBERT A. AINSWORTH
UNITED STATES
CIRCUIT JUDGE

/s/ E. GORDON WEST
UNITED STATES
DISTRICT JUDGE

/s/ ALVIN A. RUBIN
UNITED STATES
DISTRICT JUDGE

[APPENDIX TO COURT'S OPINION]

EQUALIZATION FORMULA
1975-1976 SCHOOL YEAR — CURRENT BASIS

I. *Cost of Minimum Foundation Program* (For a full nine-month session, based on membership and other current data at first reporting period 1975-1976)

1. Teachers allotted and employed (Teachers and principals — regular and special education) Number X actual salary according to State Minimum Salary Schedule .. $ _____

2. Special Education Teacher Aides — Number allotted and employed X actual salary to $2,-900 ..... $ _____

3. Supervisors of Instruction — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

4. Visiting Teachers — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

5. Transportation — Actual cost of approved routes, based on State bus operators' salary schedule, and allowance up to $1,785 for special education bus attendants .. $ _____

6. Mandated Costs — State's share (57%) of costs for sabbatical leave, substitute teachers, and accumulated sick leave severance pay ..... $ _____

7. Salary Adjustments for Other School Employees — Cost-of-living increases for school employees who are not governed by a State minimum salary (any new appropriation distributed on basis of number of teachers allotted and employed, and appropriations existing prior to 1/1/75 distributed one-half as in past and one-half on basis of teachers allotted and employed) .
$ _____

8. Other Cost — including general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation. Student membership at first reporting period X $48 ..... $ _____

Total Cost of Minimum Foundation Program ..... $ _____

II. *Support for the Minimum Foundation Program* (Based on estimated current revenues for 1975-1976)

1. Parish 5-Mill Constitutional Tax (Net collections by school board or 90% of 5-mills of parish assessment, whichever is smaller $ _____

2. Severance Tax* — School board's share of severance tax proceeds returned to parish of origin ..... $ _____

3. Rent or Lease of School Lands — 50% of total collections, except as otherwise provided in House Bill 180 by Mr. LeBleu of the 1975 Regular Session if House Bill 180 is enacted into law ..... $ _____

Total Support for Minimum Foundation Program ..... $ _____

III. *Difference Necessary to Equalize* $ _____

---

* inclusion as a support factor dependent upon forthcoming court ruling as to whether or not school boards are to share in severance tax proceeds under new Constitution.

/s/ JAMES E. FITZMORRIS, JR.
LIEUTENANT GOVERNOR
AND
PRESIDENT OF THE SENATE

/s/ E. L. HENRY
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

APPENDIX B

United States District Court
Middle District of Louisiana

MINUTE ENTRY:
SEPTEMBER 9, 1976
WEST, J.

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children, et al

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, et al,

This case is before the Court on plaintiffs' motion for a new trial. Briefs have been filed, and after due consideration thereof, the Court concludes that no oral

argument is needed. As appears from the record in this case, all essential facts were stipulated to by all counsel prior to oral argument held on June 3, 1976. At that time, the case was before the Court on plaintiffs' motion for a preliminary injunction and on the motions of all defendants for summary judgment dismissing the suit in its entirety. On June 15, 1976, for written reasons assigned and filed in the record, judgment was entered denying plaintiffs' motion for a preliminary injunction and granting defendants' motions for summary judgment, and thus dismissing the suit in its entirety. Counsel for plaintiffs now contends that the Court had before it only the request for a preliminary injunction and that therefore plaintiffs should now be heard on their request for a permanent injunction and a declaratory judgment. But the granting of defendants' motions for summary judgment was dispositive of the entire case. As previously stated, the Court did have before it the motions of all defendants for summary judgment, and all pertinent facts had been stipulated to. The motions for summary judgment were granted for the reasons previously assigned, and the case was dismissed on its merits. Now, after a review of the record once again, the Court finds no merit to the specification of errors contained in plaintiffs' motion for a new trial. Therefore:

IT IS ORDERED that plaintiffs' motion for a new trial be, and it is hereby DENIED.

/s/ ROBERT A. AINSWORTH, JR.
ROBERT A. AINSWORTH, JR.
UNITED STATES
CIRCUIT JUDGE

/s/ E. GORDON WEST
E. GORDON WEST
UNITED STATES
DISTRICT JUDGE

/s/ ALVIN B. RUBIN
ALVIN B. RUBIN
UNITED STATES
DISTRICT JUDGE

APPENDIX C

United States District Court
Eastern District of Louisiana

SAMUEL A. SCARNATO, Individually and for and on behalf of his minor children, et al

versus CA No. 76-45

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, et al

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Samuel A. Scarnato, Mrs. Maryellen Hamilton, Mrs. Ethel Griffin, George H. Hoag, and Matthew Proctor, Jr., each appearing individually as well as for and on behalf of his minor children, and the Orleans Parish School Board, plaintiffs in the above-named action, hereby appeal to the Supreme Court of the United States from the judgment dismissing the complaint in this action and entered on June 15, 1976, which judgment became final on

September 9, 1976 upon entry of the Court's denial of plaintiffs' motion for a new trial.

This appeal is taken pursuant to 28 U.S.C. §1253.

Samuel I. Rosenberg
Of
Polack, Rosenberg,
Rittenberg, & Endom
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: (504) 581-1422

Attorneys for Plaintiffs

[Filed: October 29, 1976]

APPENDIX D

LOUISIANA CONSTITUTION OF 1974
ARTICLE VII

PART II. PROPERTY TAXATION

§ 18. Ad Valorem Taxes

Section 18. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of

fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.

(D) Valuation. Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

* * *

§ 23. Adjustment of Ad Valorem Tax Millages

Section 23. Prior to the end of the third year after the effective date of this constitution, the assessors and the Louisiana Tax Commission or its successor shall complete determination of the fair market value or the use value of all property subject to taxation within each parish for use in implementing this Article. Except as provided in this Paragraph, the total amount of ad valorem taxes collected by any taxing authority in the year in which Sections 18 and 20 of this Article are implemented shall not be increased or decreased, because of their provisions, above or below ad valorem taxes collected by that taxing authority in the year preceding implementation. To accomplish this result, it shall be mandatory for each affected taxing authority, in the year in which Sections 18 and 20 of this Article are implemented, to adjust millages upwards or downwards without regard to millage limitations contained in this constitution, and the maximum authorized millages shall be increased or decreased, without further voter approval, in proportion to the amount of the adjustment upward or downward. Thereafter, such millages shall remain in effect unless changed as permitted by this constitution. Nothing herein shall prohibit a taxing authority from collecting, in the year in which Sections 18 and 20 of this Article are implemented or in any subsequent

year, a larger dollar amount of ad valorem taxes by (a) levying additional or increased millages as provided by law; (b) placing additional property on the tax rolls; or (c) increases in the fair market or use value of property after the first determination of that value to implement this Article. This Section shall not apply to millages required to be levied for the payment of general obligation bonds.

LOUISIANA CONSTITUTION OF 1974
ARTICLE VIII

§ 13. Funding; Apportionment

Section 13. . . .

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance

tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or subschool district, or any municipality or city school board which supports a separate city system of public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, dura ion, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

* * *

State of Louisiana
Board of Elementary and Secondary Education
Baton Rouge 70804

May 18, 1976

The Louisiana State Board of Education meeting in regular session March 20-21, 1975, took the following action:

"On motion of Mr. Whetstone, seconded by Mr. Nix, the Board ratified the Minimum Foundation Program Equalization Formula, as submitted by the State Department of Education, contingent upon the approval of the Attorney General." (Schedule 75)

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of the Louisiana State Board of Education, March 20-21, 1975.

/s/ J. KELLY NIX
J. Kelly Nix
Ex Officio Secretary

/s/ A. J. "SOOKIE" ROY
President, State Board of Elementary and Secondary Education

* * *

ESSENTIAL ELEMENTS OF MINIMUM FOUNDATION PROGRAM EQUALIZATION FORMULA IN LOUISIANA

[attachment to Minutes of March 20-21, 1975]

The minimum foundation program equalization distribution is based on a formula which allows to each parish and city school board the difference between its cost of operating a minimum foundation program of education and the ability of the local system to support the program.

The Cost division of the formula includes: (1) Salaries of Teachers; (2) Supervisors of Instruction; (3) Visiting Teachers; (4) Special Education Teacher Aides; (5) School Bus Transportation; (6) Other Cost — a flat amount per student ($48 in 1974-75) to provide state aid for general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation; (7) state support for mandated costs, including sabbatical leave pay, substitute teachers, and accumulated sick leave severance pay; and (8) Cost of Living salary adjustments for school lunch employees, administrative and other personnel who are not covered by a state minimum salary schedule.

The Support division of the formula consists of: (1) the State Per Educable distribution; (2) the parish 5-mill Constitutional Tax (net amount collected or 90% of 5 mills of the assessment, whichever is smaller); (3) the local school board's share of severance tax proceeds which are returned to the parish of origin;

and (4) Rent or Lease of school lands (50% of total collected). The Per Educable distribution will no longer be a factor after the 1974-75 fiscal year, as the new Constitution provides that all minimum foundation program funds be distributed on the basis of equalization. After December 31, 1974, participation of parish school boards in severance tax allocations is dependent on a forthcoming court ruling on provisions of the new Constitution regarding the distribution of severance tax proceeds that are returned to the parish of origin.

The final division of the equalization formula reflects the difference between the total cost of the minimum education program for each parish and city school system and the amount of support which each school board can generate for subsidizing the program, and is referred to as the difference necessary to equalize . . .

* * *

Regular Session, 1975
SENATE CONCURRENT RESOLUTION NO. 10
BY MR. MOUTON AND REPRESENTATIVE WARES
[June 17, 1975]

A CONCURRENT RESOLUTION

To provide for the approval by the legislature of the formula adopted by the State Board of Elementary and Secondary Education for the equitable allocation of funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools.

WHEREAS, in its meeting on March 21, 1975, the State Board of Elementary and Secondary Education adopted a formula for the equitable allocation of funds; and

WHEREAS, Article VIII, Section 13(13) of the Constitution requires the legislature to approve the formulas adopted by the State Board of Elementary and Secondary Education which provide for the equitable allocation of funds to the school systems; and

WHEREAS, that constitutional provision requires the legislature to approve the formula prior to making the appropriation of funds sufficient to insure a minimum foundation program of education; and

WHEREAS, it is necessary that the legislature approve this formula as soon as possible.

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that the minimum foundation program equalization formula adopted by the State Board of Elementary and Secondary Education on March 21, 1975, is hereby approved . . .: [For text of formula see Dist.Ct.Op., App. A, *supra*].

* * *

Regular Session 1975
HOUSE BILL NO. 1627 [ACT 16 of 1975]
BY MR. REILLY, CHAIRMAN, HOUSE COMMITTEE ON APPROPRIATIONS
(SUBSTITUTE FOR H.B. 363 BY MR. REILLY)
[August 5, 1975]

AN ACT

Making appropriations for the ordinary expenses of the state government, pensions, public schools, public roads, public charities, and state institutions

and providing with respect to the expenditure of said appropriation.

Be it enacted by the Legislature of Louisiana: . . .

05 STATE GENERAL FUND MINIMUM FOUNDATION PROGRAM EQUALIZATION DISTRIBUTION:
To provide a minimum program of education for all children in the public schools in the state, including the payment of teachers' salaries and bus operators' salaries in accordance with full implementation of Act 27 E.S. 1964 and Act 28 E.S. 1964, and Act 397 of 1968, respectively, by applying the formula as presently approved by the State Board of Education and the legislature; . . .

TOTAL: $533,104,835.

* * *

State of Louisiana
Board of Elementary and Secondary Education
Baton Rouge 70804
September 2, 1976

Mr. Jack A. Grant
Grant and Barrow
220 Lavoisier Street
Gretna, LA 70053

Dear Mr. Grant:

The Louisiana State Board of Elementary and Secondary Education, meeting in regular session on April 22, 1976, took the following action:

"On motion of Mr. Watkins, seconded by Mr. Bankston, the Board approved Item I, Cost of the Minimum Foundation Program, for 1976-77."

(Schedule 66)

"Mr. Watkins offered a motion, seconded by Mr. Bankston, to approve Item II, Support for the Minimum Foundation Program, with the Alternate Equalized Charge-Back of the proposed changes in 5-Mill charge-back."

(Schedule 66)

"Mr. Watkins' motion passed with the following roll call vote:"

YEAS: Bankston, Bopp, Castille, Davis, Fourrier, Reeds, Watkins
NAYS: Hunter, Lombard
ABSENT: Roy, Snellings

"On motion of Mr. Watkins, seconded by Mr. Bankston, the Board adopted Item III, Difference Necessary to Equalize, of the Minimum Foundation Program for 1976-77."

(Schedule 66)

I certify that the foregoing is a true and correct copy of an official excerpt from the Minutes of the State Board of Elementary and Secondary Education for April 22, 1976.

/s/ A. J. ROY, JR.
A. J. Roy, Jr., President

/s/ J. KELLY NIX
J. Kelly Nix, Ex-Officio
Secretary

EI:lab
Attachment

EQUALIZATION FORMULA
1976-77 SCHOOL YEAR — CURRENT BASIS

I. *Cost of Minimum Foundation Program* (For a full nine-month session, based on membership and other current data at first reporting period 1976-77)

1. Teachers allotted and employed (Teachers and principals — regular and special education) Number X actual salary according to State Minimum Salary Schedule ..... $ _____

2. Special Education Teacher Aides — Number allotted and employed X actual salary to $3,045 ..... $ _____

3. Supervisors of Instruction — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

4. Visiting Teachers — Number allotted and employed X 12/9 of State salary for teacher with a Master's degree and maximum experience ..... $ _____

5. Transportation — Actual cost of approved routes, not including transportation for college and university students, based on

State bus operators' salary schedule, and allowance up to $1,874 for special education bus attendants ..... $ _____

6. Mandated Costs — State's share (57%) of costs for sabbatical leave, substitute teachers, accumulated sick leave severance pay, and workmen's compensation ..... $ _____
7. Salary Adjustments for Other School Employees — Cost of living increases for school employees, not including school lunch employees, who are not governed by a State minimum salary schedule (distributed on basis of number of teachers allotted and employed) ..... $ _____
8. Other Costs — including general control, teaching materials and supplies, operation and maintenance of plant, fixed charges and auxiliary agencies other than transportation. Student membership at first reporting period X $48 $ _____

Total Cost of Minimum Foundation Program ..... $ _____

II. *Support for the Minimum Foundation Program* (Based on estimated current revenues for 1976-77)

1. Parish 5-Mill Constitutional Tax on Equalized Assessment basis less commissions and deductions ..... $ _____

1a. State Revenue Sharing Funds Attributable to Parish 5-Mill Constitutional Tax ..... $ _____

Total Support for Minimum Foundation Program ..... $ _____

III. Difference Necessary to Equalize ..... $ _____

Explanatory Notes on Formula

SUPPORT OF PROGRAM

1. Parish 5-Mill Constitutional Tax: The amount charged against parish and city school boards for the 5-Mill Constitutional Tax shall be based on equalized assessments for real estate not subject to homestead exemptions, plus the actual assessments for personal property and public service corporations, less commissions and deductions.

1a. State Revenue Sharing Funds Attributable to Parish 5-Mill Constitutional Tax: Parish and city school boards shall be charged in the Support Program with the net amount receivable from Revenue Sharing funds to offset homestead exemptions on that portion attributable to the 5-Mill Constitutional Tax.

* * *

Regular Session, 1976

SENATE CONCURRENT RESOLUTION NO. 89

BY MESSRS. MOUTON AND WILLIAMSON AND REPRESENTATIVES A. JACKSON AND J. JACKSON

[July 16, 1976]

A CONCURRENT RESOLUTION

To provide for the approval by the legislature of the formula adopted by the State Board of Elementary

and Secondary Education for the equitable allocation of funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools.

WHEREAS, in its meeting on April 22, 1976, the State Board of Elementary and Secondary Education adopted a formula for the equitable allocation of funds; and

WHEREAS, Article VIII, Section 13(B) of the Constitution requires the legislature to approve the formulas adopted by the State Board of Elementary and Secondary Education which provide for the equitable allocation of funds to the school systems; and

WHEREAS, that constitutional provision requires the legislature to approve the formula prior to making the appropriation of funds sufficient to insure a minimum foundation program of education; and

WHEREAS, it is necessary that the legislature approve this formula as soon as possible.

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that the minimum foundation program equalization formula adopted by the State Board of Elementary and Secondary Education on April 22, 1976, is hereby approved . . .

* * *

Regular Session, 1976

HOUSE BILL NO. 154 [Act 17 of 1976]

BY MR. REILLY, CHAIRMAN, HOUSE COMMITTEE ON APPROPRIATIONS AND MESSRS. CHABERT, CHARBONNET, R. LABORDE AND VIDRINE

[July 20, 1976]

AN ACT

Making appropriations for the ordinary expenses of the state government, pensions, public schools, public roads, public charities, and state institutions and providing with respect to the expenditure of said appropriation, and to otherwise provide with respect thereto.

Be it enacted by the Legislature of Louisiana: . . .

19-70-03-05 STATE GENERAL FUND MINIMUM FOUNDATION PROGRAM EQUALIZATION DISTRIBUTION:

To provide a minimum program of education for all children in the public schools in the state including the payment of teachers' salaries and bus operators' salaries in accordance with full implementation of Act 27 E.S. 1964 and Act 28 E.S. 1964, and Act 397 of 1968 respectively, by applying the formula as presently approved by the State Board of Education and the Legislature; . . .

TOTAL: $540,638,308

Supreme Court, U. S.
FILED
MAR 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1029

SAMUEL A. SCARNATO, ET AL,
Appellants,

versus

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL,
Appellees,

LOUISIANA SCHOOL BOARDS ASSOCIATION AND JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

MOTION TO DISMISS OR AFFIRM APPEAL FROM FEDERAL COURT

JACK A. GRANT
220 Lavoisier Street
Gretna, Louisiana 70053
Attorney for Appellee,
Jefferson Parish School Board

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-1029

SAMUEL A. SCARNATO, ET AL,
Appellants,

versus

HONORABLE MRS. MARY EVELYN PARKER, TREASURER OF THE STATE OF LOUISIANA, ET AL,
Appellees,

LOUISIANA SCHOOL BOARDS ASSOCIATION AND JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

MOTION TO DISMISS OR AFFIRM APPEAL FROM FEDERAL COURT

Appellee, Jefferson Parish School Board, moves pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States:

(i) to dismiss the appeal sought to be presented by Samuel A. Scarnato, et al, from the judgment of the U. S. District Court for Middle District of Louisiana granting appellees' motion for summary judgment and denying appellants' request for a preliminary injunction on the grounds that the formula for 1975-76 is moot and the formula for the current year is presently under attack in the Louisiana state courts.

(ii) to affirm, without further argument, the judgment of the District Court, on the grounds that *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) is controlling and that Louisiana assessment practices by themselves do not violate the Equal Protection Clause of the 14th Amendment of the U. S. Constitution.

QUESTION PRESENTED

Whether a statewide school finance statute in which local property assessments involve approximately 6% of the total amount funded to the schools, raises a substantial federal issue.

STATEMENT

The Minimum Foundation Program (hereinafter MFP) is established by the 1974 Louisiana Constitution, Article VIII, Section 13(B). Funds are to be appropriated by the legislature pursuant to formulas adopted by the State Board of Elementary and Secondary Education (hereinafter BESE) and distributed equitably to the parish and city school systems on an annual basis.

The formulas adopted by BESE are made up of the cost side and the support side. At issue in the case at bar is the support side only. Historically, the legislature has not appropriated sufficient funds to fully meet the cost side of the program. Thus, local taxes in the amount of 5 mills (said taxes mandated by 1974 Louisiana Constitution, Article VIII, Section 13[C]) have been charged back to the parish and city school systems. In essence, this is done by multiplying the assessed value of property within the district by 5 mills. After deducting for the cost of collecting the tax, the net collected is deducted from the cost side of that parish's portion of the MFP, and the remainder of the cost is then distributed to the parish from state funds. The combination of the state funds plus the net proceeds of the 5 mill constitutional tax collected by the parishes equals an amount of money necessary to finance the MFP in each parish.

The MFP is established annually and money allocated for the 1975-76 school year has been completely disbursed.

The legislature approved the formula which charges back to the parishes, not the actual net funds received from the 5 mill constitutional tax, but funds based upon "equalized assessments." This new formula is currently under attack in the state courts of Louisiana in an action brought by appellee herein, Jefferson Parish School Board, against the same defendants that are sued in the case at bar. Said suit, entitled "*George Horne, Individually and on Behalf of His Minor Children, and the Jefferson Parish School Board v. Louisiana State Board of Elementary and*

Secondary Education, et al," No. 197-818, challenges the formula as violating the 1974 Louisiana Constitution, Article VIII, Section 13(B).

ARGUMENT

The appeal should be dismissed or, in the alternative, the judgment of the District Court should be affirmed for the following reasons:

1. As a matter of comity, the state court is the preferable forum to interpret the claim asserted by appellants under the 1974 Louisiana Constitution.

2. *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973) is controlling and the Louisiana assessment practices by themselves do not violate the Equal Protection Clause.

I. The Appeal Should be Dismissed

The District Court in the case at bar refused to accept the pendent claim asserted under the 1974 Louisiana Constitution, Article VIII, Section 13. Now being heard in Louisiana state courts is another very similar challenge to the MFP. Appellees in *Horne, et al* allege that the distribution of state funds pursuant to the 1976-77 MFP violates the mandates of the 1974 Louisiana Constitution, Article VIII, Section 13 in that said funds are not being equitably distributed. The formula for the 1976-77 MFP uses the 5 mill chargeback, but instead of using the actual net dollar figure collected by the parish, a study was conducted in 1974 to

determine the average assessment ratio to fair market value and this hypothetical number was used in determining the amount of chargeback.

In light of both the District Court's refusal to hear the pendent state claim and the *Horne* suit, which will require a state court determination and interpretation of Article VIII, Section 13 of the 1974 Louisiana Constitution, appellee suggests that this Honorable Court should likewise refuse pendent jurisdiction and allow the state court to interpret the state constitution.

If this Honorable Court would refuse the pendent claim, the only remaining relief this Court can grant is a declaratory judgment, which in essence would be partial in nature because it would only cover the federal issue of whether the past MFP violated the 14th Amendment of the U. S. Constitution.

The formula under attack in this suit was changed for the 1976-77 school year to partially conform with appellants' prayer for judgment. With this change and the expenditure of allocated funds for 1975-76, appellants' suit has been rendered moot.

II. The Judgment of the District Court Should Be Affirmed

The U. S. Supreme Court in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973) held that education is not a fundamental right under the U.S. Constitution. Also, in the case at bar as in *Rodriguez,* there is no "definable category of 'poor'

people." Since there is no fundamental right involved, nor is there a suspect class, only a rational basis test must be met to uphold the constitutionality of the challenged MFP.

The appellant seeks to distinguish *Rodriguez* from the case at bar by pointing out differences in the *Rodriguez* funding program and the Louisiana MFP. The appellants further contend that varying assessment practices throughout Texas had very little if anything to do with the Texas school finance program, whereas, in Louisiana assessments do play a role in the determination of final funding to the school systems in Louisiana. However, appellee, Jefferson Parish School Board, submits that these differences are immaterial and inconsequential and the appellees can meet the rational basis test as summarized in *Morey v. Doud*, 354 U.S. 457 (1957), which is as follows:

"1. The Equal Protection Clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend that clause merely because it is not made with mathematical nicety or because in practice it results in some inequity.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

"4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79."

Under this test, the Courts have been very reluctant to overturn any school financing program. In the recent case of *Brown v. Board of Education of the City of Chicago*, 368 F. Supp. 110 (N.D. Ill., 1974) the Court held that merely "administrative convenience, sudden unexpected demographic changes, and response to special educational needs" are sufficient to justify a rational basis test. The Court further held that variations between schools in student-teacher ratio do not violate the Equal Protection Clause under the rational basis test.

Furthermore, the Court in *Rodriguez* touched upon the local property tax as a basis for school revenue and found that such a plan meets the rational basis:

"While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others, the existence of 'some inequality' in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. (Citations

omitted.) It may not be condemned simply because it imperfectly effectuates the State's goals. (Citation omitted.) Nor must the financial system fail because, as appellee suggests, other methods of satisfying the State's interest which occasion 'less drastic' disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative." (Citation omitted.) (411 U.S. at 50, 51.)

Appellee submits that the bases and state purposes outlined in the affidavits of both Mr. George Benton and Mr. Ponder Jones combined with local participation in MFP funding previously discussed are sufficient to meet the classical rational basis test.

In the *Rodriguez* case the Court took note of the fact that there were no uniform statewide assessment practices in Texas. The court stated:

> "Every district supplements its Foundation grant in this manner. In some districts, the local property tax contribution is insubstantial as in Edgewood where the supplement was only $26 per pupil in 1967. In other districts, the local share may far exceed even the total Foundation grant. In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value.[100]

* * *

---

[100] "There is no uniform statewide assessment in Texas. Commercial property, for example, might be assessed at 30% of market value in one county and at 50% in another. 5 Governor's Committee Report, 25-26; Berke, Carnevale, Morgan & White, supra, n. 29 at 666-667, n. 16." (411 U.S. at 46; 93 Sup. Ct. at 1303).

The Jefferson Parish School Board submits that Stipulation No. 7, infra, is similar to the facts quoted by the Court in the *Rodriguez* case. Therefore, the Jefferson Parish School Board submits the above reasons are sufficient to meet the rational basis test as outlined.

Appellee, Jefferson Parish School Board, further contends that *Levy v. Parker*, 411 U.S. 978 (1973), is not controlling in the case at bar. The *Levy* Court found arbitrary and therefore unconstitutional the formula for distribution from the property tax relief fund (PTR). The Court considered ". . . only the combination of unequal assessments, limitations on the taxing power of a local government, and facially nondiscriminatory payment of state revenues to localities based upon prevailing local millage rates . . ." (346 F.Supp. at 905). The Court earlier, after commenting that property in Louisiana is assessed "on different standards in the various parishes.", (at 900) stated that "Assessment practices contribute to the inequality but they do not alone create it." Thus, though in the case at bar, assessment practices allegedly remain different in the parishes, the other ingredients of the unconstitu-

tional PTR Fund are missing and therefore *Levy v. Parker* is not applicable here.

Appellee, Jefferson Parish School Board, strongly objects to the use of the assessment ratios in appellants' jurisdictional statement (Page 6). The parties in the suit at bar agreed to the following stipulation:

> "Stipulation 7. While the parties differ strongly on the actual ratio of assessed value to fair market value, as these terms are used in Article VII, Section 18, of the Louisiana Constitution of 1974, in the various parishes, as relates both to movable and immovable property; and while they further differ with respect to the combined impact of assessments of movable and immovable property in each of the parishes of the state; and while they do not stipulate with respect to the actual practices in each of the various 64 parishes, they stipulate that the average ratios of assessed value to fair market value of immovable property in the year 1974 differed in at least a substantial number of parishes to a degree more than de minimis as between the assessment ratios in each parish. The parties further stipulate that the two studies made by PAR (Public Affairs Research Council of Louisiana, Inc.), one in 1960 and one in 1971, were studies of immovable property, which included property as set forth in the letter of Arthur Thiel (Exhibit Defendants State - 1). Each of the parties reserves the right to urge any conclusions, however, that might result from the stipulation; for example, plaintiff reserves the right to urge that this difference constitutes a denial of, or one part of a denial of, equal protection of the law; defendants and both intervenors reserve the right to urge that the difference in assessment practices, for example, on immovable property, are not consequential when all of the factors that go into making up the total tax revenues and the Minimum Foundation Formula are taken into account."

This stipulation controls the facts concerning actual assessment practices in Louisiana. Further, the figures quoted in appellants' jurisdictional statement, Page 6, are in contravention of the aforementioned stipulation and are a result of a statistical study, the validity of which is under strong attack by this appellee in the *Horne* suit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court for the Middle District of Louisiana be affirmed, or the appeal dismissed.

OF COUNSEL

Supreme Court, U. S.
FILED
MAR 24 1977
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1029

SAMUEL A. SCARNATO, ET AL.,
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v.

HONORABLE MRS. MARY EVELYN PARKER
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Defendant-Appellees,
LOUISIANA SCHOOL BOARDS ASSOCIATION AND
JEFFERSON PARISH SCHOOL BOARD,
Intervenor-Appellees.

On Appeal from the United States District Court for the Middle District of Louisiana

MOTION TO AFFIRM OR DISMISS

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NO.

SAMUEL A. SCARNATO, ET AL.,
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Intervenor-Appellees.

On Appeal from the United States District Court for the Middle District of Louisiana

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MOTION TO AFFIRM OR DISMISS

DEFENDANT-APPELLEES AND LOUISIANA SCHOOL BOARDS ASSOCIATION MOVE THE COURT TO AFFIRM THE JUDGMENT SOUGHT TO BE REVIEWED ON THE APPEAL ON THE GROUND THAT IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS CAUSE DEPENDS ARE SO INSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT. IN THE ALTERNATIVE, DEFENDANT-APPELLEES AND LOUISIANA SCHOOL BOARDS ASSOCIATION MOVE THE COURT TO DISMISS THE APPEAL HEREIN ON THE GROUNDS HEREINAFTER SET FORTH IN SUPPORT THEREOF.

I. MOTION TO AFFIRM

Defendant-appellees and Intervenor-appellee, Louisiana School Boards Association, pursuant to Rule 16 (1) (c) and (d) of the Rules of the Supreme Court of the United States, move that the final judgment and order of the District Court be affirmed on the ground that the decision of the District Court is so obviously correct under the principles of federal comity and the principles established by this Court in *San Antonio Independent School District v. Rodriquez*, 411 U. S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973); *McInnis v. Shapiro*, 293 F.Supp. 327 (Ill., 1968) affirmed sub nom. *McInnis v. Ogilvie*, 394 U. S. 322, 89 S.Ct. 1197, 22 L.Ed.2d 308 (1969); and *Burruss v. Wilkerson*, 310 F.Supp. 572 (Va., 1969) affirmed 397 U. S. 44, 90 S.Ct. 812, 25 L.Ed.2d 37 (1970), as to warrant no further review by this Court.

A. Opinion Below

The judgment and Per Curiam opinion of the District Court are set forth in Appendix A of plaintiff-appellants' jurisdictional statement and reported at 415 F.Supp. 272 (M.D. La., 1976). The Court's minute entry denying plaintiff-appellants' motion for a new trial is set forth in Appendix B of plaintiff-appellants' jurisdictional statement.

B. Jurisdiction

Subject to Louisiana School Boards Association's and defendant-appellees' alternative Motion to Dismiss, especially, but not exclusively, on the ground of lack of

jurisdiction, the jurisdictional requisites are adequately set forth in plaintiff-appellants' jurisdictional statement.

C. Question Presented

Immediately, defendant-appellees and Louisiana School Boards Association take issue with the question presented in plaintiff-appellants' jurisdictional statement. The true question presented is as follows: Whether, during an interim period of some three years during which the state is actually moving in deliberate steps from unequal assessment as to only immovable property under an "actual cash value" system of ad valorem assessment to equal assessment under a percentage of fair market value system, the Fourteenth Amendment to the U. S. Constitution requires the state legislature, in approving and thereby making efficacious and in appropriating state funds in connection with an annual state minimum foundation program of education formula wherein the state merely insures, as a secondary obligor, the program support in each local school district only to the extent that local ability to pay therefor falls short of fully supporting the program therein, to abandon, in determining such local ability to pay support for such educational program, the use of real, actual amounts of local funds derived from a tax of a fixed millage on all property—both movable and immovable—within each local school district and to utilize, in lieu of these real, actual amounts of local funds, inexact hypothetical, theoretical amounts of "local property tax funds" not actually collected and available to pay for such educational program support.

D. Constitutional and Statutory Provisions Involved

Pertinent constitutional and statutory provisions are set forth in plaintiff-appellants' jurisdictional statement.

E. Statement

In this case on appeal, state fiscal policy is of a minor significance, if it is of any significance at all. The focal point of the state's legitimate interest being furthered by the formula assailed by plaintiff-appellants in this case is the state's educational policy, particularly by the state's interest in insuring a minimum foundation program of education. This legitimate interest or goal of the state is similar to that of Texas in the *Rodriquez* case, supra, and is wholly unrelated to the apparent state goal or interest of the Property Tax Relief (PTR) fund involved in *Levy v. Parker*, 346 F.Supp. 897 (E.D. La., 1972) affirmed 411 U. S. 978, 93 S.Ct. 2266, 36 L.Ed.2d 955 (1973). Because the state goal or interest being furthered herein is wholly different from and unrelated to the state goal or interest apparently involved in *Levy v. Parker*, supra, what may be a rational means of furthering the state goal or interest in this case on appeal necessarily differs wholly from and is quite unrelated to what may or may not be a rational means of furthering the other state goal or interest involved in the *Levy* case, supra. Where the ends are totally unrelated, the means reasonable to achieve those different ends bear no correlation to one another. The legitimate state interest in this case is the insuring of a minimum foundation program of education for all public elementary and secondary schools in the state.

As pointed out in *Rodriquez*, supra, this "foundation grant" theory is a product of the pioneering work of two New York educational reformers in the 1920's, George D. Strayer and Robert M. Haig, and in the program's reliance on both state and local resources, Louisiana's minimum foundation program of education is comparable to the programs that have been employed in virtually every other state. As also explained in *Rodriquez*, the minimum foundation program of education is designed to accomplish many varied educational goals. It tends to have an equalizing influence on expenditure levels between school districts by placing the heaviest burden on the school districts most capable of paying. Local school board contribution to the support of the program assures local autonomy and local control of local schools. The local school board contribution to the support of the program is low enough not to exhaust the revenues of local school boards, which may use other local revenue sources to enrich the local educational offering to a level above the minimum level guaranteed or insured by the state minimum foundation program of education. The state funds are not appropriated to support entirely but rather merely to guarantee or insure the program; in Louisiana, Article VIII, Section 13(B), of the 1974 Louisiana Constitution expressly states that the state funds appropriated are merely "to insure" the minimum foundation program of education. "To insure" this program means to pay, as a secondary obligor only, the losses incurred by the lack of amounts of local school board contribution, paid as the primary support obligation, to fully fund and support the program throughout the local

districts. In other words, state funds insure or guarantee the minimum foundation program of education in every local school district only to the extent that the local school board support contribution falls short of fully funding and supporting the total costs of this program within the local school district. In all these respects, the Louisiana minimum foundation program of education is similar to that of Texas in the *Rodriquez* case, supra.

The precise minimum level of educational operation guaranteed by the program is defined on a yearly basis and may change from year to year. The local school board primary support contribution is also defined on a yearly basis. The state fund amounts vary directly with respect to the level of minimum education defined in any given year and inversely with respect to the local school board primary support contribution. In the program's overall history, both the minimum level offered and the amount of state fund contribution have risen markedly.

In defining the minimum level of education offered by the program, Louisiana is very similar to Texas in the *Rodriquez* case; the program assures that there will be teachers, compensated at the state teacher salary schedule, in certain fixed teacher-pupil ratios in every public elementary and secondary school in the state, special education teachers, principals, and other supportive personnel according to schedules which are uniformly applied to every public elementary and secondary school in the state, and payment of transportation and other operating costs according to uniformly applied schedules.

Although the local school board primary support contribution varies from year to year and has paid a lower ratio of the yearly program costs as the program has evolved over the years of its history, the state constitutionally authorized local school board property tax has always been a local revenue source included in determining local ability to contribute support to the program, because it is made effective by a mere resolution of the local school board, because its purpose is for general, basic educational needs (as is the minimum foundation program of education), and because it is the only local revenue source that is common to all local school boards in the state. In recent years the constitutionally authorized school board property tax for general, basic educational needs has been at the millage rate of five mills for all local school districts, except for plaintiff-appellants' Orleans Parish, which is authorized a millage rate of thirteen mills. Article VIII, Section 13(C), of the 1974 Louisiana Constitution also allows electors voting in a local school district to impose additional millages on themselves for "a specific purpose" (which has never been to render additional support to the minimum foundation program but rather other specific purposes). Such additional millages have not been included in determining local support in the minimum foundation program, because such use would be ultra vires to the specific purposes for which the electors of a local school district voted the additional millages on themselves, because the rationale of these additional millages is to have electors themselves increase their own tax burdens, but not that of others, for their own use and benefit in increasing the

educational levels in their own local school districts, and because using such additional millages to support the minimum level offering statewide would deter local electors from imposing extra tax burdens on themselves to raise the level of educational support and would deter experimentation and educational advancement as a whole.

Even though Orleans Parish is constitutionally authorized thirteen mills by mere resolution of the Orleans Parish School Board for general, basic educational needs (some eight mills higher than every other local school board in the state), Louisiana's 1975–1976 minimum foundation program formula used only the five mill property tax rate for local school support contribution from every local school board, including Orleans Parish School Board. Orleans Parish was allowed this extra eight mill rate of property tax (or better than some $10.4 million) to use strictly for its own benefit to add to and rise above the state guaranteed minimum level of education in Orleans Parish schools.

Another feature of the 1975–1976 program formula that resulted in additional sums of money for Orleans Parish was the computation of local ability to support the program as being the lower of either the actual collections from the five mill tax (after tax collector deductions for costs and commissions) or 90% of five mills times total parish assessment (effecting a presumed 10% cost of collecting the tax). But the Orleans Parish School Board received the full five mills times total parish assessment and, therefore, was able to lower its local support to the program by 10% of what it actually received

from the five mill tax, or something better than $650,000.

This feature allowing Orleans Parish to obtain this additional amount was deleted in the 1976–1977 program formula, which, at the same time, used a formula to approximate an equalization of assessments as to immovable property. There were also other changes in the definition of the minimum level of education that the program would guarantee in 1976–1977. All these changes were done together for a very specific purpose—to further the state's interest in avoiding drastic budget changes from one year to the next succeeding year in the local school districts throughout the state. Such drastic budget changes as plaintiff-appellants sought in 1975–1976 would disrupt education, destroy the minimum foundation program goals in that year, and bankrupt some 55 school boards in the state.

It is mandatory to understand that, under Louisiana law, neither the state department of education nor the local school boards exercise any influence over assessors' practices, over assessment, over the local boards of review, or over the state tax commission. There is one minor and insignificant exception: The president, and only the president, of the Orleans Parish School Board alone sits, with several other local New Orleans municipal officials, on the local Orleans Parish Board of Review. In effect, state and local governmental units supervising public education must take the assessments as they find them. Under Louisiana law, state and local governmental units supervising public education have no interest nor responsibility to oversee assessment prac-

tices; such interest and responsibility are delegated to the assessors, the state tax commission, the local boards of review, and ultimately the courts. Because the local boards of review are mostly comprised of the local governing authorities (usually the parish police jury or parish council, as the case may be), local school boards stand in a wholly different posture from the local governing authorities as to local assessment practices. Local governing authorities, which were the primary beneficiaries of the PTR fund in *Levy v. Parker*, supra, are implicated in assessment practices; local school boards are not.

Even though *Bussie v. Long*, 286 So.2d 689 (La. App. 1st Cir., 1973) did not hold that the state tax commission was required to equalize assessment ratios statewide, many people erroneously believed that that was the holding of the case. This Honorable Court should not concern itself with *Bussie v. Long*, supra, primarily for the following reasons: *Bussie v. Long* erroneously interpreted the equal protection clause of the Fourteenth Amendment to the U. S. Constitution as requiring much more than the equal treatment of all those similarly situated. Nevertheless, the court in *Bussie* had other state constitutional and statutory grounds to arrive at that same erroneous interpretation which the court applied to strike down the statutory definition of "actual cash value," to adopt, in lieu thereof, fair market value, and to strike down the statutory authority allowing local taxing districts to fix assessment valuations for taxes levied only within the local tax district and only for local tax district purposes, even though that

statutory authority also provided that such local tax district valuation operate equally and uniformly on all taxable property within the local district where the tax is being levied. *Bussie v. Long* then held that the state tax commission was required to supervise parish and Orleans assessors to assure that all taxable property to be assessed locally was assessed statewide at full fair market value, even though there were no longer any statewide property tax burdens. In any event, *Bussie v. Long* was overruled and superseded by the adoption of the 1974 Louisiana Constitution, the last word in Louisiana law on the subject of property tax assessments.

Basically, the 1974 Louisiana Constitution, in Article VII, Section 18, sets up a new property tax system with assessed value being at fixed percentages of fair market value (or use value for bona fide agricultural, horticultural, marsh, and timber lands). Because of the vast costs and time necessary to complete the changeover from one whole system to another, the 1974 Louisiana Constitution made its mandatory provisions thereon fully implementable three years after the effective date of the constitution. The constitution became effective on January 1, 1975, and the new assessment system will be completely implemented by January 1, 1978.

The state department of education then decided to take a look at Louisiana's assessment system to see if it would desire to make some educational policy decisions regarding this interim period and to preview and prepare for the new property tax system coming into effect during fiscal year 1978–1979. It is taking those fiscal

agencies charged with implementing the new system some three years and some $18 million dollars to accomplish their task. The state department of education never intended to be that exact in its own look at the system; it authorized some mere $16,000.00 or so to have a simple sales/assessment ratio study done in 1975 using only 1974 sales data.

This sales/assessment ratio study was done in two distinct parts: (1) The state department of education itself, using retired teachers and principals under the supervision of Ed Milligan, a department staff member, went out to the various courthouses to gather the data needed (the prices of sales of immovable property from the 1974 clerk of court conveyance records and the assessed values of those immovable properties sold in 1974 from the tax rolls) and (2) computer computation of the data, according to statistical standards, done by a Michael Peters, Ph.D, a faculty member of Louisiana State University. This particular sales/assessment ratio study has become commonly known as "the Peters' Study," although Dr. Peters himself did not take part in defining or gathering the data nor in using or applying the computations to any property tax figures.

The figures used by plantiff-appellants on page 6 of their jurisdictional statement, wherein they seek to dramatize their contentions to this Honorable Court, are purportedly based upon this sales/assessment ratio study and are unreliable and erroneous. Those figures contain a sales/assessment ratio adjustment for movable property as well as immovable property, but the scope of the study excluded movable property and included only

immovable property. [Dr. Peters himself has said that trying to use the immovable property adjustment figures on movable property values is erroneous and was put on paper by a department staff member after Dr. Peters completed his part of the study and without Dr. Peters' knowledge, and Dr. Peters will so testify in *Horne et al v. Board of Elementary and Secondary Education, et al.*, No. 197,818, Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge (filed December 3, 1976, and still pending).] The Board of Elementary and Secondary Education also rejected adjustment figures for movable property values, because no study was ever done on those particular values; the 1976–1977 program formula does contain adjustment figures for immovable property values but not for movable property values. Moreover, Dr. Peters has already testified in a deposition in the *Horne* case, supra, that the so-called statewide average of 11.39% is *not* the statewide average of all assessed value/fair market value ratios of local assessors but rather is an average of the usable data gathered in the study, which is unweighted as to total local volumes of property value but instead depended on a complicated statistical formula involving confidence level, precision, and population deviation.

Furthermore, all the figures adopted by plaintiff-appellants from the Peters' Study are inexact and unreliable. All statisticians agree that this type of study, relatively easy, inexpensive and time-saving to do, *at best* results only in estimated approximations based on random samplings of random samplings. That conclusion is when the data gathered and studied are *at best*; in this

case, not only were movable property values not studied at all but also excluded were all unsold immovable properties, including the most valuable properties of all—industrial property—which is rarely sold outright for fair market value. In many parishes, no commercial properties were studied. Yet, plaintiff-appellants relied upon this study as their only evidence to prove factually their main contention. [While the raw evidence of the study itself was uncontroverted, there was still argument over what it proved or failed to prove. The same is true of a stipulation which agreed that the average ratio of assessed value to fair market value as to only immovable property varied from parish to parish to a degree more than de minimis; the exact degree was left open, movable property left open, and no legal conclusions conceded.] The District Court below rejected this proof summarily, when it said, "This formula would depend on three theoretical figures, *not readily susceptible of being computed*. . . ." (Emphasis added.) 415 F.Supp. at 275.

Evidence was uncontrovertedly admitted to show that the definition of the minimum educational level guaranteed by the state in 1975–1976 was actually being implemented and fulfilled in every local school district in the state by the 1975–1976 program formula, that adjustment of that formula in any other way, including any way urged by plaintiff-appellants, would thwart the fulfillment of that state goal or interest in insuring the minimum foundation program of education in 1975–1976, and that the state department of education monitors the yearly local property tax and other local revenue sources to the effect that such monitoring enables the department of education and the legislature to make adjustments in any year wherein they may see a local assessor attempting purely subjective manipulation of the local school board tax by assessment practices or otherwise.

F. The Question Is Insubstantial

The holding in *Levy v. Parker*, supra, is totally inapplicable to this case on appeal. The majority opinion in *Levy* makes it clear that the holding of that case is unique and is based upon a myriad of variables which happened to come together in a singular way to effect a denial of equal protection. Essential ingredients in *Levy* missing in this case on appeal include the following: (1) A Property Tax Relief (PTR) fund with its peculiar goal or state interest purported to be furthered therein—to wit: to reimburse local governing authorities for tax revenues they would have collected but for the existence of the Louisiana homestead exemption. (2) The limitation on taxes (millages) that electors within certain local tax districts could impose on themselves, and the lack of such limitation on citizens of other local tax districts. (3) The fact that in *Levy* only the assessed value of the homestead exemption was involved—$2,000 (regular) or $5,000 (veteran's)—a fixed value in all the parishes of the state, while it was the millage rate that varied and that caused the disparity in the distribution of the PTR fund (varying millage rate times fixed values of the homestead exemption). (4) The fact that the homestead exemption relates only to immovable property and that the PTR fund related only to immovable property. (5) Most of all, as the District Court emphasized, in *Levy*,

unlike this case on appeal, there was a continuing formula not subject to annual legislative review and appropriation. As the court said in *Levy*,

> "We express no opinion concerning the validity of a legislative plan basing appropriations on standards employing geographic, population, or other systematic classifications. It should be unnecessary to distinguish the inequality arising in this situation from the disparity that might result from annual or biennial legislative appropriations to local areas. Such appropriations are not based on a continuing formula. The legislature perforce reviews its action with each appropriation; further, appropriations generally do not continue in effect from one session to another. Those entities receiving less can make a special legislative appeal, and they are afforded access to the legislative process every session to seek change." 346 F. Supp. at 904.

Moreover, the denial of equal protection in *Levy*—though it incidentally resulted in a parish to parish variance—really lay in the unequal treatment of only those truly similarly situated, that is, those owning homes of like value, within the same neighborhoods, within the same parish, having the same governmental needs and sharing the same tax burden. The PTR Fund paying state revenues only for taxes lost by the homestead exemption, induced local assessors to assess, for example, one of these similarly situated homes, having no homestead exemption, at $500.00, to assess a second of these similarly situated homes, having a $2,000.00 regular homestead exemption, at $2,500.00 and to assess a third of these similarly situated homes, having a $5,000.00 veteran's homestead exemption, at $5,500.00.

[The homestead exemption itself did not relate to local tax burdens or home values but rather to the status of their owners.] This overall situation was pointed out by the majority opinion in *Levy*,

> "It was possible to increase the parish share of PTR Fund payments, without simultaneously increasing the tax burden on local homeowners, by raising the millage rate on all property while lowering the assessments on property not occupied as a homestead and raising the assessments of homesteads to approach the allowable homestead exemption. The evidence indicates that this was in fact done." 346 F. Supp. at 903.

While the state goal or interest sought to be furthered in *Levy* under the PTR Fund was to reimburse to local governing authorities revenues lost because of the homestead exemptions, the state goal or interest rationally furthered in this case on appeal is to have the state annually insure, as a secondary obligor, a yearly minimum foundation program of education, without establishing a maximum, in each local school district of the state to the extent that local ability to pay therefore falls short of fully supporting the program therein. This goal is met by an annual formula and an annual appropriation of the legislature. Both the goal and the means, in this case on appeal, are wholly unconnected to the goal and the means described in *Levy*. Moreover, two of the three judges in *Levy* and on the District Court below herein were the same. Judge Alvin B. Rubin, the author of the majority opinion in *Levy* at trial, saw the distinctions herein and fully concurred in the Per Curiam opinion of the District Court below.

In their jurisdictional statement, plaintiff-appellants assert that the District Court below fundamentally misinterpreted *San Antonio Independent School District v. Rodriquez*, 411 U. S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) in the following respects: They claim that *Rodriquez* was limited only to the question of variances in property tax from district to district as to total property value disparities and was also limited to the question of allocating state resources in such a manner as not to be invidiously discriminatory. Defendant-appellees and Louisiana School Boards Association submit that it is plaintiff-appellants, not the District Court below, who are fundamentally misinterpreting the *Rodriquez* case.

As the majority opinion in *Rodriquez* pointed out,

> "In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value. The greatest interdistrict disparities, however, are attributable to differences in the amount of assessable property available within any district.
>
> * * * *
>
> The District Court found that the State had failed even 'to establish a reasonable basis' for a system that results in different levels of per-pupil expenditure. 337 F. Supp., at 284. We disagree." 411 U. S. at 46–47 93 S.Ct. at 1303–1304.

In *Rodriquez*, then, the disparities at the local level in the property tax, even purely in the Local Fund Assignment, were due to differences among the districts as to all three factors—(1) millage rates, (2) ratios of assessed values to fair market values, and (3) total property values. In Louisiana's 1975–1976 program formula, local support contribution possibly varied somewhat because of differences in ratios of assessed values to fair market values, but mostly they varied because of the vast differences in total property values existing among the various parishes.

It is true that in Louisiana the local school boards are co-extensive with the parishes, except that two cities have their own school boards, and that in Texas the division is first down to county level and then down to several local school districts within each county. But that does not mean that in Texas each local school district within a county has the exact same overall ratio of assessed value to fair market value: One local school district may have a higher mix of industrial and commercial property and a lower amount of residential property than another school district within the same county and consequently has an overall higher assessed value ratio. Furthermore, nothing in the *Rodriquez* opinion indicated that Texas assessors were unlike most assessors and reassessed all property at exactly uniform intervals. If they did not, even with a uniform rate of assessment at the time of each assessment, the difference in intervals between reassessments will cause differences in the ratios of assessed value to fair market value, especially in an inflationary economy. Moreover, a local school district in Texas in one county will have a different assessed value ratio from another local school district in a different county. And while in Texas the Local Fund Assignment was divided at different stages by a compli-

cated economic index, when it came down finally to the last level of actually funding the Local Fund Assignment, it was done among the local school districts by local property taxes having different millages, different assessed values, and different total property values. The District Court below thoroughly agreed with the majority opinion in *Rodriquez*, when it indicated that the variances due to assessment ratio differences, both in Louisiana and in Texas, were insignificant in the face of the vast differences in the total amounts of property values among the various local school districts. The District Court below explained,

> "Even if all property were assessed on a uniform basis, the parishes with relatively less valuable immovable property would contribute less to the MFP than the parishes whose residents own more valuable property." 415 F. Supp. at 275

In spite of the fact that total property value differences would remain, what plaintiff-appellants primarily desire herein is to have this Honorable Court re-legislate the minimum foundation program formula to compel the state legislature, during the interim period in which the new property tax system is being implemented, to use, in determining local ability to support an educational program, the inexact, estimated approximations of differences in assessed value ratios of the "Peter's Study," which approximations are hypothetical, theoretical figures not representing the real, actual amounts of local taxes available to support the educational program. But the District Court below grasped the effect of such use of hypothetical figures and held,

> "The amount a parish actually receives from a 5-mill levy on its actual assessment is a real figure, not a hypothetical one, and it takes parochial ability to pay into account in a way that is different, but not constitutionally invalid." 415 F. Supp. at 275.

Furthermore, the District Court below correctly found, as a matter of fact, that the legitimate state interests or goal in insuring a minimum foundation program of education was actually being fulfilled by the program formula assailed by plaintiff-appellants herein.

> "There is no evidence in the record to suggest that the plan employed discriminates in any way against any definable category of 'poor people' or that it results in the deprivation of a 'minimum foundation education' to any class of persons, or indeed to any individual person. It is clear from the record that the objective of the State's 'Minimum Foundation Program' is being accomplished by use of the formula." 415 F. Supp. at 275.

The evidence uncontrovertedly showed that if any redistribution of the formula occurred, including especially any redistribution implicitly suggested in the remedies urged by plaintiff-appellants, some local school boards would obtain more program support from all sources and some local school boards would receive substantially less and would not be able to offer to their students the minimum level of educational opportunity guaranteed by the state. In other words, what plaintiff-appellants are asking for in this case on appeal is an overshare of minimum foundation program of education funds for themselves at the expense of many other school boards and at the expense of destroying entirely

the state goal or interest sought by the program. In sum, they are asking this Honorable Court to violate the jurisprudential principles of the equal protection clause of the Fourteenth Amendment to the U. S. Constitution, in the name of that clause.

Finally, this case should be summarily affirmed because of the state's intense educational policy and interest at stake herein. As the majority in *Rodriquez* explained,

> "Thus, we stand on familiar grounds when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.
>
> "In addition to matters of fiscal policy, this case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels. Education, perhaps even more than welfare assistance, presents a myriad of 'intractable

> economic, social and even philosophical problems.' Dandridge v. Williams, 397 U. S., at 487, 90 S.Ct. at 1163. The very complexity of the problems of financing and managing a statewide public school system suggests that 'there will be more than one constitutionally permissible method of solving them,' and that, within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect. *Jefferson v. Hackney*, 406 U. S., at 546-547, 92 S.Ct., at 1731. On even the most basic questions in this area the scholars and educational experts are divided. Indeed, one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education—an assumed correlation underlying virtually every legal conclusion drawn by the District Court in this case. Related to the questioned relationship between cost and quality is the equally unsettled controversy as to the proper goals of a system of public education. And the question regarding the most effective relationship between state boards of education and local school boards, in terms of their respective responsibilities and degrees of control, is now undergoing searching reexamination. The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions." 411 U. S., at 41–43, 93 S.Ct., at 1301–1302.

Thus, the holding in *Rodriquez* followed the holding in *McInnis v. Ogilvie*, 394 U. S. 322, 89 S.Ct. 1197, 22 L.Ed.2d 308 (1969) affirming *McInnis v. Shapiro*, 293 F. Supp. 327 (Ill., 1968), in which the court held,

> "But the allocation of public revenues is a basic policy decision more appropriately handled by a legislature than a court.
>
> * * * *
>
> "Even if the Fourteenth Amendment required that expenditures be made only on the basis of pupils' educational needs, this controversy would be non-justiciable. While the complaint does not present a 'political question' in the traditional sense of the term, there are no 'discoverable and manageable standards' by which a court can determine when the Constitution is satisfied and when it is violated.
>
> "The only possible standard is the rigid assumption that each pupil must receive the same dollar expenditures. Expenses are not, however, the exclusive yardstick of a child's educational needs. Deprived pupils need more aid than fortunate ones. Moreover, a dollar spent in a small district may provide less education than one used in a large district. As stated above, costs vary substantially throughout the state. The desirability of a certain degree of local experimentation and local autonomy in education also indicates the impracticability of a single, simple formula. Effective, efficient administration necessitates decentralization so that local personnel, familiar with the immediate needs, can administer the school system. As new teaching methods are devised and as urban growth demands changed patterns of instruction, the only realistic way the state

> can adjust is through legislative study, discussion and continuing revision of the controlling statutes. Even if there were some guidelines available to the judiciary, the courts simply cannot provide the empirical research and consultation necessary for intelligent educational planning. As early as 1919 Mr. Justice Homes explained that 'the Fourteenth Amendment is not a pedagogical requirement of the impracticable.' *Dominion Hotel v. Arizona*, 249 U. S. 265, 268, 39 S.Ct. 273, 274, 63 L.Ed. 597 (1919)." 293 F. Supp. at 332, 335–336.

Burruss v. Wilkerson, 397 U. S. 44, 90 S.Ct. 812, 25 L.Ed.2d 37 (1970) affirming *Burruss v. Wilkerson*, 310 F. Supp. 572 (Va., 1969) is in accord.

For all of the above and foregoing reasons the judgment of the District Court below should be summarily affirmed. To do so would save this Honorable Court needless time, energy, and expense merely to reannounce principles which it has already exhaustively explained and firmly entrenched in preceding cases. The invaluable time of this Honorable Court and the invaluable and limited capacity of its docket could, in this way, be reserved for that other class of extremely significant and pressing cases raising novel issues resolutions of which will affect broad policies relating to the individual and his government on a nationwide scale.

II. MOTION TO DISMISS

In the alternative to Louisiana School Boards Association's and defendant-appellees' motion to affirm the summary judgment of the District Court below, defendant-appellees and Louisiana School Boards As-

sociation move this Honorable Court, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, to dismiss this appeal on the grounds that this appeal presents an insubstantial federal question, that the case is now moot and is no longer a "case or controversy," that plaintiff-appellants, by this appeal, are in essence seeking only an advisory opinion of this Honorable Court, that the existence of other state grounds on which the case may be decided to avoid unnecessary constitutional decisions and the novelty of those state issues give rise to the doctrine of abstention for reasons of federal comity, and that if the District Court below had not granted defendant-appellees' motion for summary judgment, the District Court below should then have dismissed Orleans Parish School Board as a party plaintiff and declined to accept jurisdiction over this subject matter.

A. Insubstantial Federal Question

Defendant-appellees and Louisiana School Boards Association submit that the question presented on this appeal is an insubstantial federal question for all the same reasons expressed therefor in their foregoing motion to affirm.

B. Mootness and Lack of Controversy

In view of the facts that the distribution of all minimum foundation program of education funds under the 1975–1976 formula, sought to be enjoined, after a declaratory judgment that that particular formula violated the U. S. Constitution, by plaintiff-appellants herein,

has been completed and that the 1975–1976 program formula complained of has now expired forever as of June 30, 1976, defendant-appellees and Louisiana School Boards Association submit that this case is now moot. The tardiness of plaintiff-appellants' complaint is underscored by the fact that variations in assessment ratios, the very heart of the attack on the 1975–1976 formula, were adjusted for in the 1976–1977 program formula. Moreover, the new state property tax assessment features are due to be completed by January 1, 1978. There is no longer any "case or controversy" with respect to the expired 1975–1976 formula nor with respect to any future formulas which might speculatively be the same as the 1975–1976 formula. As pointed out in the motion to affirm, the program formula changes annually and, as shown in the District Court below, is part of an evolving process. The past formula attacked is gone, and there is in existence now no formula which falls within the ambit of plaintiff-appellants' complaint. Therefore, this case on appeal is now moot and presents no "case or controversy" to this Honorable Court. The fact that sometime in the future a formula may or may not be devised which falls within the ambit of plaintiff-appellants' complaint is purely speculative; until there is one, there is no exigent controversy within the scope of plaintiff-appellants' complaint.

As the court succinctly explained in *Mills v. Green*, 159 U. S. 651, 16 S.Ct. 132, 40 L.Ed. 293 (1895),

> "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not

to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." 16 S.Ct. at 133.

C. The Seeking of an Advisory Opinion

For the same reasons given above in support of mootness and lack of controversy, it is clear that plaintiff-appellants, by this appeal, are really only seeking an advisory opinion of this Honorable Court. As noted in their jurisdictional statement and in Louisiana School Boards Association's and defendant-appellants' motion to affirm, the case of *Horne et al v. Board of Elementary and Secondary Education et al.*, No. 197,818, Nineteenth Judicial District Court of Louisiana, is now pending in state court, wherein the 1976–1977 minimum foundation program of education is under attack concerning the assessment variance adjustments and the "Peter's Study." Defendants in this case on appeal are defendants in the *Horne* case also. The Louisiana School Boards Association, the Jefferson Parish School Board, and Orleans Parish School Board are all parties in this case on appeal and in the *Horne* case also. What plaintiff-appellants appear to be seeking by this appeal is an advisory opinion by this nigh Honorable Court, in order to resolve indirectly the *Horne* case. Certainly, if plaintiff-appellants were granted their contentions on this appeal, the *Horne* case would be indirectly resolved thereby. Defendant-appellees and Louisiana School Boards Association suggest that this Honorable Court not take this appeal but rather wait for the appeal of the *Horne* case, which, unlike this case on appeal now, does present a case and controversy at this time.

D. Abstention

The District Court below, after finding no federal constitutional violation, dismissed the pendant claim under the Louisiana Constitution asserted in the alternative by plaintiff-appellants in support of the same relief. The District Court below cited *United Mine Workers of America v. Gibbs*, 383 U. S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). Defendant-appellees and Louisiana School Boards Association believe that this was a wise decision, especially since there has been no state court interpretation of the brand new state constitutional provisions asserted in the pendant claim.

Now, however, defendant-appellees and Louisiana School Boards Association further suggest that before this Honorable Court take up the federal constitutional issues on this appeal, it abstain from doing so, in order to avoid unnecessary constitutional decisions, and allow these issues to be resolved first in state court on the alternative state grounds raised by plaintiff-appellants in the court below. This suggestion is especially apropos in view of the fact that at the present time there already is a pending state case on this subject matter, *Horne et al v. Board of Elementary and Secondary Education et al.*, supra.

E. Dismissal of Orleans Parish School Board and Lack of Jurisdiction Over the Subject Matter

In the District Court below defendant-appellees

filed a motion for summary judgment which was granted. In the alternative thereto, a motion to dismiss Orleans Parish School Board as a real party plaintiff in interest and to dismiss the action as to all other plaintiffs for lack of jurisdiction over the subject matter was also filed. Defendant-appellees and Louisiana School Boards Association now submit that before this Honorable Court attempt to overturn the granting of the motion for summary judgment below, it dismiss this case on the grounds that Orleans Parish School Board is not a proper party plaintiff and that there is no jurisdiction over the subject matter of the claims of all other plaintiff-appellants.

Orleans Parish School Board is not a real party plaintiff in interest herein, because it is a mere political subdivision of the state of Louisiana and, as such, possesses no equal protection rights against the state. It is a political subdivision. Article VI, Section 44, Paragraph (2), of the 1974 Louisiana Constitution, states,

> "(2) 'Political subdivision' means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions."

It has no power to sue in federal court in a representative capacity. No Louisiana Supreme Court opinion has said so, and the state statutes grant it power to sue only in its own right. It has no equal protection rights itself against the state. *Triplett v. Tiemann*, 302 F. Supp. 1239 (Neb., 1969). In accord are *County of Lancaster v. Philadelphia Electric Co.*, 386 F. Supp. 934 (Penna.,

1975); *City of Trenton v. New Jersey*, 262 U. S. 182, 43 S.Ct. 534, 67 L.Ed. 937 (1923); *City of Newark v. New Jersey*, 262 U. S. 192, 43 S.Ct. 539, 67 L.Ed. 943 (1923); *Williams v. Mayor and City Council of Baltimore*, 289 U. S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933); and annotation, 116 A.L.R. 1037.

Once Orleans Parish School Board is dismissed as a party plaintiff, there is a lack of jurisdiction as to the claims of all other plaintiffs. 28 U.S.C. §1343 jurisdiction is improperly invoked in a case of this type and is inapplicable hereto, and jurisdictional amount was never met factually in good faith under 28 U.S.C. §1331 with respect to the claims of the six individual Orleans Parish taxpayers remaining as sole plaintiffs herein.

Jurisdiction under 28 U.S.C. §1343 is improperly invoked herein and is inapplicable hereto. There is no federal constitutional right to education. The majority in *Rodriquez* held,

> "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." 411 U. S. at 35, 93 S.Ct. at 1297.

And,

> "It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws." 411 U.S. at 33, 93 S.Ct. at 1297.

Jurisdiction was properly exercised in the *Rodriquez* case itself because at that time many believed in good

faith that there was a federal constitutional right to education, but now that *Rodriquez* has clarified it otherwise, 28 U.S.C. §1343 jurisdiction is not applicable to this kind of case.

Because there is no federal constitutional right to education, the only interest the six individual plaintiffs can claim is their equal treatment in the collecting and disposition of taxes. In short, their claim is limited to a taxpayers' action. What they claim expressly in their complaint is unequal treatment in taxpaying ability; that is the personal legal interest upon which their cause of action is based.

Such being the case, there is lack of jurisdiction as to jurisdictional amount under 28 U.S.C. §1331 as interpreted by *Alterman Transport Lines, Inc. v. Public Service Commission of Tennessee*, 386 U. S. 262, 87 S.Ct. 1023, 10 L.Ed.2d 39 (1967) affirming 259 F. Supp. 486 (Tenn., 1966), rehearing denied 386 U. S. 1014, 87 S.Ct. 1343, 18 L.Ed.2d 452 (1967); *Buckingham v. Lord*, 326 F. Supp. 218 (Mont., 1971); and *Carter v. County Board of Education of Richmond County, Georgia*, 393 F.2d 487 (5th Cir., 1968).

It is true that in *Lynch v. Household Finance Corporation*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) this Honorable Court rejected the jurisdictional distinction between "personal" and "proprietary" rights. However, that case involved deprivation of property without any procedural due process under a state's prejudgment garnishment statute. And in that case, where the court rejected the distinction, the court dropped

footnote 6 at 405 U. S. 542, 92 S.Ct. 1117. That footnote said, in pertinent part,

" * * * * *

> "We have repeatedly barred anticipatory federal adjudication of the validity of state tax laws. [Citing cases.] * * *The decisions cited by appellees may, therefore, be seen as consistent with congressional restriction of federal jurisdiction in this special class of cases, and with long-standing judicial policy." Note 6, 405 U. S. at 542, 92 S.Ct. at 1117.

It must be emphasized that the intent of that quote was to describe a special class of taxpayers' cases broader in scope than the express provisions of 28 U.S.C. §1341 and dismissable not on the grounds of 28 U.S.C. §1341 itself but rather on the grounds of non-applicability of 28 U.S.C. §1343 and lack of jurisdictional amount under 28 U.S.C. §1331. This class of cases, though not strictly 28 U.S.C. §1341 type of cases, are thus dismissable as being *consistent with* 28 U.S.C. §1341.

For all of the above and foregoing reasons, this Honorable Court, before it should attempt to note probable jurisdiction, ought to dismiss this appeal.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I CERTIFY that, in accordance with Rule 33 of the Rules of the Supreme Court of the United States, three copies of the foregoing Motion to Affirm or Dismiss have been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto, this_____day of March, 1977.

THOMAS S. HALLIGAN

B-5813, 3-77